BEFORE THE NATIONAL LABOR RELATIONS BOARD
UNITED STATES OF AMERICA
REGION 19

CASCADE HEALTHCARE COMMUNITY, INC.[1]
d/b/a ST. CHARLES HOME HEALTH SERVICES

Employer

and **Case 36-RC-6258**

OREGON NURSES ASSOCIATION

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record[2] in this proceeding, the undersigned makes the following findings and conclusions.[3]

SUMMARY

St. Charles Home Health Services, (Home Health), the Employer herein, is engaged in the business of providing home health services, in the Bend and Redmond, Oregon areas. At issue in this case is whether the petitioned for unit of about 40 full time, part time, and on-call home health registered nurses, (RNs) working out of the Home Health's Bend and Redmond, Oregon facilities constitute an appropriate residual unit of the Petitioner's currently represented RNs engaged in direct patient care at the St. Charles Hospital located in Bend, Oregon.[4] The Employer contends that the unit sought by Petitioner is not a proper residual unit. Additionally, the Employer contends that the intake and community care coordinator nurses working out of

[1] The Employer's name appears as amended at the hearing.
[2] The Employer and the Petitioner filed timely briefs, which were duly considered.
[3] The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization(s) involved claim(s) to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
[4] The parties stipulated at the hearing that the sought after unit includes Home Health RNs working out of the Employer's Bend and Redmond, Oregon locations, including full-time, part-time, and on-call nurses. It is clear from the record that the parties have agreed to exclude guards and supervisors as defined in the Act, nursing unit leaders and managers, team leaders and confidential employees. In view of the record, the parties' arguments, and Board law, I shall exclude these categories of employees from the Unit that I have found appropriate.

the Bend and Redmond, Oregon home health facilities should not be included in any separate Home Health RN unit, if that unit is found to be appropriate by the Regional Director. The Employer claims the intake and community care coordinators are not involved in direct patient care and do not share a community of interest with the other Home Health RNs. However, the Employer is willing to proceed to an election in a unit comprised only of Home Health RNs who work in direct patient care. The Petitioner is willing to proceed to an election if a separate unit of Home Health RNs is found appropriate.

Based on the record evidence and the parties' contentions and arguments, I find that the residual unit sought by Petitioner is inappropriate, but that the alternative unit of Home Health RNs which includes the intake and community care coordinators, is an appropriate unit in the circumstances of this case. Accordingly, I have directed an election in this unit.

Below, I have provided a section setting forth the evidence, as revealed by the record relating to the operations of Cascade Health Care Community, Inc., its Bend Hospital, Redmond Hospital and Home Health divisions, and community of interest factors for employees in the alternate unit proposed by the Petitioner. Following the "Evidence" section is my analysis of the applicable legal standards in this case, my conclusion, and a section directing an election in the unit.

I.) EVIDENCE

A) Cascade Health Care Community's Operations

Cascade Health Care Community, Inc. engages in the operation of two acute care hospitals, St. Charles Medical Center, Bend and St. Charles Medical Center, Redmond, Oregon. Additionally, the Employer operates Home Health which, as discussed above, is based out of two offices located, at most, within a few blocks of each respective hospital. The two hospitals and Home Health form three of four divisions comprising Cascade Health Care Community, Incorporated. The fourth division is referred to as "Home Office" which provides system-wide services.

The Employer and the Petitioner stipulated at the hearing that Home Health is not an acute-care provider, and that the Bend Hospital is an acute care facility. Although the Bend Hospital and Home Health are both divisions of Cascade Health Care Community, Inc., the record does not address whether they are a single employer.[5] The Petitioner nevertheless urges me to find that the Home Health RNs are a residual unit to an existing nonconforming unit of registered nurses at Bend Hospital and that pursuant to *St. Johns Hospital*, 307 NLRB 767 (1992), the Home Health RNs must be included in the existing Bend Hospital RN unit. As an initial matter, the Board's Health Care Rules do not govern non-acute care providers.[6] *See Kaiser Foundation Health Plan of Colorado*, 333 NLRB No. 66 (2001). Home Health is a non-acute care provider. Thus, the Board's Health Care Rules, which were designed to avoid the proliferation of bargaining units in acute care facilities, do not appear to apply in this case. See

[5] Although the record is silent, I assume, for purposes of argument, that Home Health and Bend Hospital constitute a single employer. Of course, if that is not the case, a self-determination election is clearly inappropriate.

[6] The Rule provides that "[e]xcept in extraordinary circumstances and in circumstances in which there are existing nonconforming units," the 8 units enumerated in the Rule will constitute the only appropriate bargaining units in acute-care hospitals. 29.C.F.R. § 103.30(a). Nurses are one of the 8 enumerated categories of employees.

Child's Hospital, 307 NLRB 90, where the Board declined to apply the Rules to a hybrid circumstance where some employees in question worked for an acute care hospital and others did not. Accordingly, the unit determination herein must be guided, not by the Rules, but by the principles discussed in *Park Manor Care Center, Inc.* 305 NLRB 872 (1991)(community of interest test applied in non-acute care settings).

B) Bargaining History

The Petitioner currently represents, and has represented since at least 1980, a unit of RNs at the Bend Hospital, described in the current collective bargaining agreement between the Petitioner and the Employer as follows:

> All registered professional nurses employed by the hospital as general duty nurses and assistant nursing unit managers excluding administrative and supervisor personnel other than assistant unit manager, nursing unit leaders/managers, collaborative team managers, team leaders and registered professional nurses not employed in direct patient nursing services.

There are approximately 500 RNs in the Bend Hospital unit. In addition to RNs working at the Bend Hospital, this unit also includes the Air Life nurses who work out of the Bend airport, the LaGrande, Oregon airport, and who accompany patients into the Bend Hospital Emergency Room and Family Birthing Center. The Petitioner also represents a separate unit of RNs at the Redmond Hospital; however that unit description is not in evidence. It is unclear how long the Petitioner has represented the Redmond unit of RNs. Some current Home Health RNs were at one time in the Redmond Hospital bargaining unit. The Petitioner has never represented the Home Health RNs. The Employer's Home Health Services Division appears to have been in existence for at least 17 years.[7] The RNs in the Home Health Services Division have never been organized into a bargaining unit.

C) Community of Interest Factors

1) Degree of Functional Integration

Home Health is a Medicare certified, joint commission accredited and registered home health agency. The Employer and Petitioner stipulated that Home Health is not an acute care facility. Home Health provides clients with home visits from registered nurses, physical and occupational therapists, speech language pathologists, social workers and home health aides. About 40 percent of the patients visited by Home Health come from the Bend Hospital. The remaining 10% come from a combination of the Redmond Hospital or a hospital in Portland, or wherever the patient has been previously hospitalized. Approximately 50 percent are referred to Home Health from other sources such as a physician's office, or a request for service from a family member or a community agency. Home Health serves a five countywide area of Deschutes, Jefferson, Crook, Northern Klamath and Wasco. In addition to the RNs, physical therapists, occupational therapists, speech language pathologists, social workers and home

[7] Although there was no evidence presented regarding the number of years the Home Health Services division has been in existence, I find that based upon Director Jerrie Allison-Melton's seventeen year tenure as the administrator of Home Health Services, that Home Health Services has been in existence for at least 17 years.

health aides work for Home Health. All of these disciplines are involved in home visitation service. The record is unclear as to the number of RNs who work out of the Bend and Redmond offices respectively.

The Bend Hospital is an acute care hospital providing inpatient, outpatient and rehabilitative services on both an inpatient and outpatient basis. There are approximately 500 RNs who are in the bargaining unit working out of the Bend Hospital location. The unit also includes Air Life nurses who are stationed at airport hangars at the Bend and LaGrande, Oregon airports. The RNs attend to trauma victims off-site, in the air and accompany them into the Bend Hospital units such as the Emergency Room and Family Birthing Center. In 2005, a Crisis Resolution Center is scheduled to open at the Bend Hospital complex. The Center will be housed in a separate building from that of the Bend Hospital. The Employer plans to staff the Center with nurses from the Bend Hospital. The purpose of the Center will be to treat psychiatric patients who are not medically ill and provide them with in-patient 24-hour residential care. The manager of the Crisis Resolution Center will also oversee five "hold rooms" attached to the Emergency Department of the Bend Hospital. The hold rooms are intended to hold individuals who are dangerous to themselves and others. Patients will be transported from the hold rooms to the Crisis Resolution Center once they have been assessed and stabilized.

The Cascade Health Care Community's Human Resource office collects applications for both Home Health and Hospital RNs. The Human Resources office conducts criminal background checks and makes reference calls of potential applicants. The team leaders of Home Health and the Director of Home Health, Allison-Melton, make the hiring decisions for Home Health. No Bend Hospital supervisor or manager provides any input with respect to Home Health hiring decisions.

The Home Health and Bend Hospital divisions of Cascade Health Care Community obtain their supplies from Materials Management, an organization that purchases supplies for the entire Cascade Health Care organization. Home Health obtains their supplies from either the Bend or Redmond Hospitals and the supplies are stored in their respective Bend and Redmond offices.

Home Health has its own separate cost center from that of the Bend Hospital. Home Health has a separate budget apart from the Bend Hospital and performs its own billing and collections, including billing all of the insurers such as Medicare. Additionally, Home Health uses a software system to input data regarding patient care, called Mises Home Care. The system is designated to meet the rules and regulations and requirements of Home Health. The Hospital RNs do not use this charting system.

2) <u>Common Supervision</u>

The Home Health RNs have no supervisors in common with the Bend Hospital RNs. Jerrie Allison-Melton serves as the administrator of Home Health and has occupied that position for the past 17 years. Allison-Melton is responsible for all of the operations at both the Bend and Redmond office locations. Allison-Melton reports to the Executive Council of Cascade Health Care Community. The Executive Council is made up of a CEO, and senior vice presidents and vice presidents.[8] Allison-Melton's title within the Cascade Health Care

[8] The record is somewhat unclear regarding the make up of the Executive Council. "The Executive Council is made up of the CEO and --senior and vice president, senior vice presidents and vice president." (TR 23).

Community is leader/manager. She is one of 24 leader/managers who comprise the operations team, conducting the day-to-day management of the Cascade Health Care Community organization.

Three team leaders manage geographic and subspecialty teams for Home Health. The three team leaders report to Allison-Melton. All three team leaders are registered nurses and supervise the Home Health therapists as well as the nurses. The team leaders are assigned by geographic location and function. The North team leader works out of the Redmond office. The Central team leader is responsible for the Bend area and a South team leader is responsible for the geographic area south of Bend to Beaver Marsh. The South team leader also oversees the perinatal team. The Central team leader also oversees the Lifeline program and office staff, who work primarily out of the Bend office. Allison-Melton and the South team leader supervise the Community Care Coordinator.

Neither Allison-Melton nor the three team leaders supervise any of the registered nurses or other staff at the Bend Hospital. No supervisors from the Bend Hospital supervise any Home Health nurses.

3) The Nature of Employee Skills and Functions

a) Hospital RNs

Hospital RNs must be graduates from an accredited school of nursing and must have a current RN licensure with the State of Oregon Board of Nursing. They must be able to lift 50 pounds. Hospital nurses are assigned to specialty units such as surgery, emergency room, rehabilitation, and intensive care, to name a few. Hospital nurses care for several patients at the same time over the course of their shifts. Hospital nurses work in teams within their units and are able to consult with team leaders and or physicians more readily than Home Health RNs. Air Life nurses who are in the Bend Hospital Bargaining unit are the only bargaining unit nurses who currently work outside the Hospital setting. While the Air Life nurses are stationed at the Bend airport and La Grande airport hangars, they provide care to trauma victims on site, in the air, and follow their patients into the Hospital trauma and birthing units.

b) Home Health RNs

Home Health RNs must have a current RN license with the State of Oregon Board of Nursing. A Bachelor's degree is not required. Home Health requires a minimum of two years relevant nursing experience and home health experience is preferred. Two years of perinatal experience are required for Home Health Perinatal RNs. Additionally, a valid Oregon driver's license is required. Home Health RNs must also provide their own auto insurance, their own car, and be able to drive in all kinds of weather conditions. Home Health RNs, like Hospital RNs, must be able to lift 50 pounds. Additionally, however, they must be able to support 200 pounds while transferring patients. Generally, Home Health RNs are more experienced than Hospital RNs and must be able to make decisions independently in the field in patient's homes. While Home Health nurses do consult with physicians to determine orders, often times the physician's orders come in after the RN has had to take appropriate action.

Home Health RNs conduct assessments of patients in their homes, and perform such tasks as taking blood pressure, taking temperatures, listening to a patient's lungs, assessing urinary tract infections, changing wound dressings, taking pulses, administering medications and monitoring potential medication interactions, teaching patients about caring for themselves,

caring for any intravenous central lines, drawing blood, and changing catheters, among other tasks. Home Health RNs also transport lab materials from patients to the Bend Hospital laboratory, and contact physicians either themselves or through the intake coordinator, in order to obtain medical orders such that patient treatments can be changed. Home Health Nurses also spend time traveling to patients' homes and recording patient information on the Home Health computer tracking system, Mises Home Care System. Home Health RNs are required to attend weekly case conferences at their respective Bend or Redmond offices where patients are discussed.

c) Intake Coordinator

The intake coordinator must be a registered nurse. There are two intake coordinators working for Home Health. There is a full-time position working out of the Bend office. The intake coordinator in Redmond works one-half time as an intake coordinator and the remainder of the time works as an RN in the field. The intake coordinators take referral calls from outside agencies, doctor's offices, hospitals, and case manager nurses and assist in determining whether Home Health can service the referral patients. The prospective patients must meet certain Medicare guidelines for home healthcare. The intake coordinators attend discharge planning meetings at the Bend and Redmond hospitals on a daily basis and assist in the transition of patients from the hospitals to home healthcare. The intake coordinator delivers information that she learns about a patient during a discharge meeting to the RN assigned to the patient's home healthcare. Additionally, the intake coordinator checks on laboratory results and relays this information to the Home Health RNs. Frequently, the intake coordinator meets with home health patients that have been admitted back into the hospitals.

d) Community Care Coordinator

The individual working in this position must be an RN. The community care coordinator works out of the Bend Home Health location. This RN carries a case load of clients who do not meet the criteria for skilled care but are at high risk for frequent visits to the emergency room. The community care coordinator visits patients in their homes. Her caseload is larger than that of the other Home Health RNs, as the intensity of the care is less. The community care coordinator organizes medication minders for her patients, is responsible for getting patients to their appointments, and performs assessments of patients. The RN in this position uses a blood pressure cuff, a stethoscope, carries a CPR mask and spill kit. The types of patients the community care coordinator deals with are congestive heart failure patients suffering relapses, patients with chronic obstructive pulmonary disease, and patients with diabetes. The community care coordinator attends the case conferences for the two Bend geographic teams.

4) Interchangeability and Contact Among Employees

Meetings Common to Home Health Staff

In 2004, Home Health tried having a general staff meeting once a month, an educational session the second month, and separate discipline meetings the third month. The four "discipline" areas of Home Health are nurses, therapists, home health aides and office staff. Prior to 2004, all Home Health staff attended a quarterly staff and education meeting, and monthly discipline meetings. Home Health is planning on reverting back to the pre-2004 meeting schedule. Additionally, all RNs including the community care coordinator attend the weekly case conferences for their respective geographic teams. The community care

coordinator attends both of the weekly case conferences for the two geographic teams working out of the Bend office.

Transfers

While Allison-Melton testified that she had no recollection of Home Health nurses transferring from Home Health to either the Bend or Redmond hospitals, other testimony indicated that at least one Bend Home Health nurse, Joni Goodnight, recently transferred to the rehabilitative unit of Bend Hospital. Testimony from Allison-Melton indicated that at least 50% of the Home Health RNs formerly worked at one of the two hospitals.

Bend Home Health RNs currently working at the working at the Bend Hospital

There are at least four Bend Home Health nurses who work at both the Bend Hospital and out of the Bend Home Health office. Catherine Ann Geibel works on call out of the Bend Home Health office and on call in the critical care unit at the Bend Hospital. Geibel, who has worked at the Bend Hospital since July 2004, has worked on call in Home Health since February 2004 and is still in her probationary period. One perinatal Home Health nurse, Janet Navarra, also works part time in the OB department at the Bend Hospital. Mary Pat Saboe, and Toni Cheeney, who is on-call on the medical floor, also work in both Home Health and at the Bend Hospital. No evidence was presented regarding Redmond based Home Health employees working at either the Redmond or Bend Hospitals.

Intake Coordinator and Community Care Coordinator

When the Bend intake coordinator is on vacation, the Redmond based, part-time intake coordinator covers for her. Other RNs who cover for the Bend intake RN are a retired intake nurse, Karen Cowan, a weekend Home Health RN, or a Home Health RN who has been attending the Bend Hospital discharge surgical planning meetings. The intake coordinator has daily conversations with the Home Health RNs regarding former Home Health patients who have been admitted to the hospital, hospital patients who are about to be discharged to Home Health, and Home Health patient laboratory results.

The intake coordinators also have daily contact with the staff, including RN staff at the respective Redmond and Bend hospitals during discharge planning meetings. The Bend intake RN attends the medical and telemetry discharge planning meetings on a daily basis. However, she is unable to attend the surgical discharge planning meeting because it is at the same time as the medical discharge planning meeting. Accordingly, one of the Home Health Bend nurses tries to attend the surgical discharge meetings once per week on Thursdays.

The record is silent with respect to the particular discharge planning meetings attended by the Redmond Hospital intake coordinator. The parties, however stipulated that the Redmond intake coordinator performs the same job functions as the Bend intake coordinator.

Because the Bend intake coordinator has never been involved in perinatal nursing, she will often put the Obstetrics (OB) Hospital RNs in contact with the Home Health nurses so they can speak with each other directly about patient follow up care. Perinatal RNs care for pregnant mothers and newborns and children up through age 13. Other than occasional vacation substitution, there was no evidence regarding regular contact between the Redmond intake RN and the Bend Hospital RNs.

The community care coordinator interacts with Home Health RNs concerning patient medicine regimens approximately once per month. The community care coordinator attends the two Bend geographic weekly case conference meetings attended by all of the Bend-based Home Health RNs

Interchange between the Bend Hospital RNs and the Bend and Redmond Home Health RNs

The vast majority of the contact between the Home Health RNs and the Bend RNs takes place via the intake coordinators who meet with both the Redmond and Bend Hospital RNs on a daily basis. With the exception of the contact that the Bend Home Health perinatal RNs have with the Bend Hospital RNs, other contact that the remaining Bend-based Home Health RNs have with the Bend Hospital RNs occurs on a sporadic basis. The Home Health RNs have no specific duties that cause them to have to travel to or visit either hospital, other than perhaps dropping off samples at the laboratory. There is no evidence that Home Health RNs in the course of dropping off laboratory samples at the Hospital laboratories and as part of their job duties, interact with Hospital RNs.

The record is silent with respect to any interchange that the Redmond Home Health RNs may have with the Bend Hospital RNs. The only exception to this is when the Redmond intake coordinator performs vacation substitution for the Bend intake coordinator.

No Bend Hospital RNs substitute for either Bend or Redmond Home Health RNs. No Bend or Redmond Home Health RNs substitute for Bend Hospital RNs. [9]

5) Work Situs

All hospital RNs in the Bend bargaining unit with the exception of the Air Flight RNs work out of the Bend Hospital. The Air Flight RNs deliver their patients to the Bend Hospital Emergency Room or Family Birthing Center. All of the Home Health Care RNs, including the intake RN and the community care coordinator, are assigned to either the Bend or Redmond office. The Home Health RNs are required to go to their respective offices once per week for a case conference of team patients. Many take this opportunity to retrieve supplies. While some of the Home Health RNs choose to input patient charting information at computer stations in the Bend and Redmond offices, they may also input this reporting information from the field or their homes using laptop computers provided to them by Home Health.

The Bend-based intake coordinator spends up to two hours in the morning at the Bend Hospital and the remainder of her time at the Bend office. The parties stipulated that the Redmond-based intake coordinator spends her intake time in much the same way as the Bend intake coordinator. In addition to working in patients' homes, driving in their personal cars to see patients, and working in their respective offices, Home Health RNs at times visit Home Health patients in the hospital. On average, this occurs less than once per month per RN.

[9] Testimony was provided that Home Health RNs were scheduled to cover for Hospital RNs while Hospital RNs attended electronic medical records charting classes scheduled to beginning September or October 2004. However, when Home Health Director Jerrie Allison Melton met with the rest of the leader/managers, they determined that this would not be realistic. Instead, the Cascade Healthcare Community organization is contemplating having the Home Health nurses who have been using an electronic medical records system coach other nurses who are learning this system because the Home Health staff is much more expert at it.

6) General Working Conditions

a) Hospital RNs

Schedules and Miscellaneous Working Conditions

The Bend and Redmond Hospital RNs work 8, 9, 10, and 12 hour shifts, depending on the unit in which they work. Some units have only 12 hour shifts. In most cases, the Hospital RNs work every other weekend. Unlike the Home Health RNs, Hospital nurses do not have the latitude to flex their schedules because in most units, the nurses are providing 24 hour care. However, there are opportunities for Hospital nurses to trade shifts if, for example, a nurse wanted to attend to a personal matter during her scheduled shift. Either the team leader or a leader manager does the baseline scheduling.

The Hospital staffing offices also play a role in scheduling nurses depending on staffing needs. If there is a sudden drop in the Hospital census, nurses are sent home or "called off." If one unit is over staffed and another is under staffed, the staffing office might float a nurse to another unit. The staffing office evaluates the staffing needs of each Hospital every four to eight hours. If a call off were required and the Hospital was unable to float an RN to another unit, agency caregivers are called off first followed by anyone being paid premium or overtime pay. Next, the Hospital seeks volunteers, then on-call staff is next, followed by position, full-time or part-time staff on a rotation basis by date.

Hospital nurses in the bargaining unit generally have a 30-minute lunch and a 15 minute break for every 4 hour increment of work time. Hospital nurses generally take their breaks in the cafeteria, in the break room on their floor, outdoors, or in their car.

Most of the Hospital units have their own on-call staff and are able to identify shifts in the schedule four weeks in advance, in which they do not have adequate staff scheduled due to vacation, or unexpected medical leaves. Often, the units will post a list of expected vacant shifts and the unit's on-call and position staff will volunteer to fill the shifts. Additionally, the Hospital operates a centralized on-call system and schedules nurses according to availability and on days that the Hospital traditionally needs more RNs. All the on-call Hospital nurses are required to work one weekend out of three, or the equivalent thereof. Certain departments within the Hospital units have required standby duty such as the operating room.

Other than the operating room, no other Hospital unit requires on call RNs to take standby duty.

Hospital nurses record their time by swiping their Identification badge when they arrive and depart from work. The card automatically records their time worked. Hospital Nurses are generally required to wear scrubs.

Wages

The Bend Hospital RN wages are set forth in the collective bargaining agreement between the Employer and the Petitioner. Wage rates as of July 6, 2003, ranged from $22.11 per hour for a Registered Nurse, up to $33.82 per hour for an RN with a Masters degree in Nursing. The wage rate paid to Bend Hospital RNs is based upon experience level and length of service. The Bend RNs also enjoy an evening shift differential of $1.44 per hour, a night shift

differential of $3.43 per hour, and an additional night shift differential for RNs with at least two years of experience of $0.99 per hour. Hospital RN weekend premium pay is $1.00 per hour.

Like the Home Health RNs, Hospital RNs who regularly work eight hour shifts, receive overtime pay at a rate one and one-half times their hourly rate, for hours worked over 80 during a 14-day period. RNs who regularly work shifts longer than eight hours, receive overtime pay at a rate one and one-half times their hourly rate for hours worked over 40 per week. Additionally, RNs receive one and one-half times their hourly rate for all time worked outside their scheduled shifts, for time spent in staff meetings and training sessions contiguous to their shift, for holiday work, for working consecutive weekends, and for all time worked on shifts started less than ten hours after a scheduled shift ended. If Hospital RNs are called off, or asked not to come to work their shift due to staffing issues, but the RN is not called off in time and arrives at the Hospital, the Hospital must offer the RN the opportunity to work one-half of her/his regularly scheduled shift.

b) Home Health RNs, Intake Coordinator and Community Care Coordinators Schedules and other Miscellaneous Working Conditions

The basic Home Health RN schedule is 8:00 a.m. to 5:00 p.m., with the RN having a one-hour lunch. However, the RNs are on call 24 hours per day, seven days per week. Home Health RNs can flex their schedules. For example, a typical Home Health RN time sheet shows that an RN clocked in and worked from 8:30 a.m. to 1:15 p.m., clocked back in from 4:00 to 5:30 p.m. and worked again from 9:00 - 10:20 p.m to complete their shift. Every RN, including full-time, part-time and on-call staff rotates to work every sixth weekend. Holidays are rotated as well. There is a specific crew that works on weekends.

A full-time case load for a Home Health RN is 20 - 25 patients at a time. The frequency of patient visitation is anywhere from twice per day to once per month. The average frequency of home visitation is two to three times per week. Of the 38 RNs performing Home Health services, not counting the intake coordinators and the community care coordinator, there are five full-time RNs, nine on-call RNs and the remainder of the RNs are part-time. The full and part-time RNs work 32 - 72 hours per pay period. There is one 40 hour per pay period that RNs work from 4:00 p.m. to 9:00 p.m. five days per week. The RNs are paid every two weeks. After 9:00 p.m., all of the home health nurses take turns rotating for standby duty. Essentially, when an RN is on standby duty, they are available for calls or visits and must carry a pager and be available to work.

During a nine hour shift, RNs are entitled to a one hour lunch break and a 15 minute break for every four hours worked. Most Home Health RNs take their lunch breaks in their cars.

The Bend intake coordinator works Monday - Friday from 8:00 a.m. to 5:00 p.m. with one hour for lunch. The first weekend of the month, the intake coordinator works Monday through Thursday and works Tuesday through Friday on the second week or 72 hours per pay period. The Redmond intake coordinator works in this position one-half day on Monday, and all of Wednesday and Friday. The remainder of the time, the Redmond intake coordinator performs home healthcare in patient's homes. The Community Care Coordinator works four ten hour shifts and is a salaried employee. An on-call Home Health RN substitutes for both the intake and community care coordinator when they are not working.

Home Health RNs record the time they work in the MISYS Home Care computer system. Home Health RNs do not wear scrubs when attending to patients, but rather wear street clothes and carry an identification badge.

Wages

The wages for Home Health RNs and the Community Care Coordinator range from a minimum $24.38 per hour to $36.57 per hour depending on experience level, and merit pay increases. Although the Community Care Coordinator is salaried, this position earns the same amount per hour as the other Home Health RNs. There is an evening shift differential of $1.36 per hour and a night shift differential of $2.93 per hour. Weekend premium pay is about $1.28 per hour. When RNs are on standby duty, they receive $3.50 an hour and $3.75 per hour on holidays for carrying the beeper. If an RN is on standby duty and must attend to a patient or other matter in person, they receive pay from the time they leave their homes until the time they return. For performing work in person while on standby duty, RNs are compensated at a rate that is one and one-half times their hourly rate. If an RN engages in telephone consultation while on standby, they are compensated in 15 minute increments at one and one-half times their hourly rate.

Every year, the RNs receive an annual wage increase based upon performance. The range of the increase is established through market studies and compensation analysis. Overtime is paid to RNs working in excess of 8 hours per day or 80 hours per pay period. Nurses who work ten hour days do not get compensated at the overtime rate until they work more than 40 hours per week. The overtime rate is one and one-half times their hourly rate. The overtime rate on holidays is two and one-half times the normal hourly rate. RNs who travel to visit patients are also reimbursed for mileage.

7) Fringe Benefits

The Employer and Petitioner stipulated that the Bend Hospital RNs and the Home Health Nurses receive essentially the same benefits provided by Cascade Health Care Community Inc. These benefits include major medical insurance, vision insurance, pharmacy benefit, dental insurance, Section 125 Flex plan, Air life, life insurance, accidental death and dismemberment insurance, long-term disability insurance, supplemental long-term disability and supplemental life insurance, malpractice insurance, liability insurance, hospital discount, New directions program, Caregiver assistance program, massage therapy, fitness room, 403(b) retirement program, earned time off, extended illness bank, bereavement leave, jury duty leave, continuing in-service education, tuition reimbursement, meal discounts, free parking, credit union, direct deposits, telecommuting, automatic teller machines, caregiver recognition, discounts to the Magic Kingdom Club and the Athletic Club, commute options, showers and lockers, emergency ride home, bike racks, preferred parking, cellular phone. Additionally, the Bend Home Health RNs and the Redmond Home Health RNs have the option of attending the annual Bend and Redmond Hospital parties.

II.) LEGAL ANALYSIS

A) Residual Unit Test

Where a portion of the work force is already organized, the Board evaluates subsequent petitions to represent remaining employees first to determine whether the petitioned-for

employees share a community of interest apart from the represented employees. *See Carl Buddig & Co.*, 328 NLRB 929 (1999). If the community of interest is not separate and distinct such that they are not an appropriate separate unit, the Board looks to whether they are an appropriate residual unit. *Id.* A residual unit is appropriate "if it includes all unrepresented employees of the type covered by the petition." *Id.* (quoting *Fleming Foods*, 313 NLRB 948, 949 (1994)).

Here, the Petitioner requests a residual unit of unrepresented RNs working in the Employer's Home Health Services Division. While the Petitioner currently represents RNs in two separate units working out of the Employer's Bend and Redmond, Oregon hospitals, the Petitioner seeks to have the Home Health Services RNs located in Bend and Redmond, Oregon, as a residual unit of the Bend Hospital unit, only. Alternatively, it requests a separate unit of Home Health Services RNs, working out of the Bend and Redmond, Oregon Home Health Services offices. The Employer, while opposing the inclusion of the intake coordinator and the community care coordinator in the petitioned-for unit, does not oppose a non-residual, separate unit of Home Health RNs.

Because the Employer and the Petitioner have stipulated that a unit comprised of all Home Health RNs working out of the Bend and Redmond Oregon Home Health Services offices, involved in direct patient care, constitutes an appropriate separate unit for the purposes of collective bargaining, it is unnecessary to determine whether there exists a sufficient community of interest between the Redmond and Bend Home Health RNs.

The only issue concerning this alternate unit is whether the intake coordinators working out of the Employer's Bend and Redmond, Oregon offices and the community care coordinator working out of the Employer's Bend, Oregon office should properly be included in the Home Health RN unit. I find that the intake coordinator and the community care coordinator share a sufficient community of interest with the stipulated alternate unit of Redmond and Bend Home Health RNs. Finally, for the reason set forth below, I find that the Home Health RNs have a community of interest which is separate and distinct from that of the Bend Hospital RNs such that they do not comprise an appropriate residual unit.[10]

Many considerations enter into a finding of community of interest. See, e.g., *NLRB v. Paper Mfrs. Co*., 786 F.2d 63 (3rd Cir. 1986). The factors affecting the ultimate unit determination may be found in the following sampling: 1.) degree of functional integration;[11] 2.) common supervision;[12] 3.) the nature of employee skills and functions;[13] 4.) interchangeability and contact among employees;[14] 5.) work situs;[15] 6.) general working conditions;[16] and 7.) fringe

---

[10] In addition, I note that the combined unit sought here by Petitioner would create a unit which would be inconsistent with the Board's Rules since the RNs involved herein are all employed by an employer which is not an acute care facility.

[11] *Seaboard Marine Ltd.,* 327 NLRB 556 (1999); and *Transerv Systems*, 311 NLRB 766 (1993).

[12] *Harron Communications*, 308 NLRB 62 (1992); *Sears, Roebuck & Co*., 319 NLRB 607 (1995).

[13] *Overnite Transportation Co*., 331 NLRB No. 85 (2000) (all unskilled employees at particular location); *J. C. Penney Co.,* 328 NLRB 766 (1999); *Harron Communications*, supra; *Downingtown Paper Co*., 192 NLRB 310 (1971); *Phoenician,* 308 NLRB 826 (1992).

[14] *J. C. Penney*, supra; *Associated Milk Producers*, supra; *Purity Supreme, Inc*., 197 NLRB 915 (1972); *Gray Drug Stores*, 197 NLRB 924 (1972); *Michigan Bell Telephone Co*., 192 NLRB 1212 (1971).

[15] *R-N Market*, supra; *Bank of America*, 196 NLRB 591 (1972); *Kendall Co.,* 184 NLRB 847 (1970).

[16] *Allied Gear & Machine Co*., 250 NLRB 679 (1980); *Sears, Roebuck & Co*., supra; *Yale University*, 184 NLRB 860 (1970). See also *K.G. Knitting Mills*, 320 NLRB 374 (1995), where the Board held that the fact that employees receive a salary, do not punch time clocks, receive different health insurance benefits

benefits.[17] "The manner in which a particular employer has organized his plant and utilizes the skills of his labor force has a direct bearing on the community of interest among various groups of employees in the plant and is, thus, an important consideration in any unit determination." *International Paper Co.*, 96 NLRB 295, 298 fn. 7 (1958).

B) The Intake Coordinator and the Community Care Coordinator Share a Community of Interest with the Home Health RNs

With regard to the degree of functional integration within the Home Health Division, all RNs, including the intake and community care coordinators play an integral role in providing services to home-based patients. With respect to supervision, all of the RNs, including the intake and community care RNs report to one of three team leaders, who oversee staff who are divided into geographical areas where their patients live. The three team leaders report directly to Allison-Melton, the Director of Home Health. Thus, the intake and community care coordinators share common supervisors with the Home Health RNs. Additionally, the three team leaders directly report to Director Allison-Melton. As such, the intake and community care coordinators and the Home Health RNs have ultimate common supervision.

Regarding the nature of employee skills and functions among the RNs, all of the nurses working as Home Health RNs, the intake coordinator and the community care coordinator must be registered nurses, possessing at least two years of nursing experience, preferably in the home health setting. All of the Home Health RNs as well as the community care coordinator, visit patients in their homes and provide direct patient care. Although the Bend intake coordinator does not visit patients in their homes, she must be intimately familiar with issues faced by home health care patients as she screens patients for their suitability for home healthcare and is the main coordination point between the Home Health RNs and Hospital patients, who are either being discharged into Home Health or who are entering the hospital after being serviced by Home Health RNs.

With respect to interchangeability and contact among the intake and community care coordinators and the Home Health RNs, as an initial matter, the Redmond intake coordinator works half time as a Home Health RN. Thus the suitability for interchange and the interchangeability between these two positions is readily apparent. Further, the Redmond intake coordinator substitutes for the Bend intake coordinator when the Bend intake coordinator is on vacation. Additionally, a Home Health RN is currently attending surgical discharge planning meetings, once per week, in order to better coordinate home health care planning. Thus, whenever the RN attends the surgical discharge meeting, that RN is performing the job functions of the intake coordinator during that meeting. Moreover, testimony from Allison-Melton indicated that the frequency of attending the surgical discharge meetings needs to increase; thus, it is probable that more Home Health RNs will be engaged in the Intake Coordinator function of attending Hospital discharge meetings. Finally, Allison-Melton testified that an on-call Home Health RN also substitutes for both the community care coordinator and the intake coordinator when they cannot work.

All of the Home Health nurses contact the intake coordinator at least once per day to review laboratory results, physician's orders, and to coordinate information on patients either being discharged into their care or regarding patients admitted to the Hospitals following care

---

from other unit employees, and are able to adjust their own hours was not an adequate basis for exclusion from the unit.

[17] *Allied Gear & Machine Co*., supra; *Donald Carroll Metals*, supra; *Cheney Bigelow Wire Works*, 197 NLRB 1279 (1972).

received in their homes. Contact between the Home Health RNs and the community care coordinator, apart from meetings, is less frequent, about once per month. With respect to meetings, the community care coordinator attends the two Bend case conference meetings twice per week where she interacts with all of the Bend-based Home Health RNs. Moreover, both the community care coordinator and the intake coordinators, who are RNs, attend the regularly scheduled nursing discipline meetings where they interact with all of the other RNs as well as the monthly staff meetings where they interact with all of the Home Health staff. Additionally, Home Health RNs use computers set up in the Bend and Redmond offices to chart patient contact; therefore, interaction between Home Health RNs, community care coordinators and the intake coordinators based out of the Bend and Redmond offices would naturally occur.

With respect to work situs, all of the Home Health RNs including the intake and community care coordinators are assigned to either the Bend or Redmond office. There are two geographic teams assigned to the Bend office and one geographic team assigned to the Redmond office. The record is silent with respect to the number of RNs assigned to work out of each office or with respect to the number assigned to each geographic team. All of the Home Health RNs are required to go to their respective offices at least once per week in order to attend a case conference of team patients. The community care coordinator attends the two Bend office case conference meetings and is based out of the Bend office. Additionally, all of the RNs are required to attend monthly meetings of the nursing discipline and quarterly training sessions and staff meetings at their offices. The Home Health RNs and the community care coordinator spend the majority of their time out of their assigned offices visiting patients, traveling to patients' homes and delivering laboratory samples. The intake coordinator spends approximately two hours out of her day at either the Bend or Redmond Hospital, depending upon her reporting location, attending discharge meetings. The intake coordinator spends the remainder of her time at her assigned office. Some Home Health RNs input patient charting information at computer stations in the Bend and Redmond offices, while others prefer to input this information from the field or from their homes using laptop computers provided to them by Home Health. In short, although the Home Health RNs and the community care coordinator spend the majority of their time out of their assigned office, all of the Home Health RNs, including the Intake and Community Coordinator, are specifically assigned to work out of either the Redmond or Bend offices and are required to attend mandatory meetings at each location. Thus, all three categories of RNs have a work situs of either the Bend or Redmond office in common.

The Home Health RNs and the intake coordinators[18] work roughly the same 8:00 a.m. to 5:00 schedule, with a one hour lunch. The main exception to this is the weekend nurse who works from 4:00 p.m. to 9: 00 p.m. five days per week. All of the RNs working for Home Health are paid on the same wage scale with a minimum of $24.38 per hour through $36.57 per hour depending on experience level and merit pay increases. Although the community care coordinator is a salaried position, this position earns roughly the same dollar amount per hour as the other Home Health RNs. Additionally, all of the Home Health RNs as well as the Hospital based RNs share the same benefits.

In view of the above, and the record as a whole, and the parties' arguments, I find that the intake coordinators and the community care coordinator share such a sufficient community of interest with the Home Health Services RNs that a unit excluding the former employees would be inappropriate.

C) <u>The Home Health RN unit has a Community of Interest Separate and Distinct</u>

[18] The Community Care Coordinator works four ten-hour days.

from that of the Bend Hospital RNs

While the Home Health RN unit and the Bend Hospital RN unit have some arguable common community of interest factors, the total lack of common supervision, the lack of contact between many of the Home Health RNs (particularly the Redmond-based Home Health RNs) and the Bend Hospital RNs, as well as the different work situs' between the two divisions, prevents a finding that an overall unit of Home Health RNs and Bend Hospital RNs is appropriate as a residual unit. Instead, I find that the Home Health RNs and the Bend Hospital RNs have a separate and distinct community of interest such that they are an appropriate separate unit.

While Jerrie Allison-Melton is a Leader/Manager within the Cascade Health Care Community, Inc. and is the Director of Home Health, there was no evidence that she has any managerial responsibility over any Bend Hospital RNs. Further, the record demonstrates that the three Home Health team leaders supervise the three Home Health geographic teams exclusively. No evidence was presented that the three team leaders have any supervisory or managerial authority over any Bend Hospital RNs. Finally, although the Human Resources office of Cascade Health Care Community conducts criminal background checks and reference checks of Home Health RN applicants, Allison-Melton and the three Home Health team leaders bear the ultimate responsibility for hiring RNs in the Home Health Division. No Bend Hospital manager or supervisor has any influence with respect to the hiring of employees for Home Health. Nor was any evidence presented that any of the Home Health team leaders or Director Allison-Melton has any influence or control over the Bend Hospital RN hires.

With respect to employee interchange, no Home Health RNs substitute for Bend Hospital RNs nor do any Bend Hospital RNs substitute for Home Health RNs. Only one category of Home Health RN, the intake coordinator, has any type of daily interaction with the Bend Hospital RNs.[19] Except for the occasional substitution of the Redmond intake coordinator for the Bend intake coordinator during vacations, no evidence was presented regarding any interaction or interchange between any of the Redmond based Home Health RNs and the Bend Hospital RNs. Although evidence was presented that Hospital RNs occasionally float between units due to staffing needs, the differences in job duties between the Hospital RNs and the Home Health RNs are sufficient such as to prohibit the floating of RNs between the Bend Hospital and the Home Health division.

With respect to work situs, the Home Health RNs are based either out of the Bend office located a couple of blocks from the Bend Hospital, or the Redmond office, located in a separate building from the Redmond Hospital but within the same Redmond Hospital complex. The Bend Hospital RNs work out of the Bend Hospital location exclusively, with the exception of the Air Life RNs who are based at the Bend and LaGrande airport hangars but who accompany patients into the Bend Hospital Emergency Room unit and Family Birthing Center unit. With the exception of the Bend intake coordinator, the main work situs of the Home Health RNs and Community Care Coordinator is either in patients' homes, or the Bend or Redmond offices.

III.) CONCLUSION

[19] I do note, however, that the Bend Home Health perinatal RNs speak to the Bend Hospital obstetrics RNs about three times per week.

In view of the above, the record as a whole and the parties' arguments, I find that the following Unit of employees share a sufficient community and, thus, constitute an appropriate unit for the purposes of collective bargaining.[20]

> All full-time, part-time, and on-call registered professional nurse employees, including intake and community care coordinator employees employed by St. Charles Home Health Services at its Bend and Redmond, Oregon offices, excluding nursing unit leaders, team leaders, managers, confidential employees, guards and supervisors as defined in the Act.

There are approximately 40 employees in the Unit.

IV.) DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by OREGON NURSES ASSOCIATION.

A) List of Voters

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co*., 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 2948 Jackson Federal Building, 915 Second Avenue, Seattle, Washington 98174, on or before

[20] See *Calco Plating Inc*., supra and *Standard Oil Company*, supra.

August 6, 2004. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

B) Notice of Posting Obligations

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so stops employers from filing objections based on nonposting of the election notice.

C) Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by August 13, 2004.

DATED at Seattle, Washington, this 30th day of July 2004.

/s/ Richard L. Ahearn

Richard L. Ahearn, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174